NG KONG YAU

v.

SINGAPORE SOCIETY OF ACCOUNTANTS

HIGH COURT, SINGAPORE
AP RAJAH J
[ORIGINATING MOTION NO. 12 OF 1982]
8 DECEMBER 1982

PROFESSIONS: *Accountants - Applicant practising in Singapore and Hong Kong - Whether the Singapore Society has jurisdiction over its members practising elsewhere - Professional offence - Which body has the right of action.*

The applicant commenced practice in Singapore as a public accountant in 1965 under the name or style of Ng Kong Yau & Co. In 1977 he also commenced practice in Hong Kong under the name or style of Lawrence Wong & Co. Two years later he admitted two other public accountants to the Singapore firm.

In late 1979 the applicant came to Singapore from Hong Kong and discussed with his partners matters "in connection with the establishment of mutual co-operation between our two Firms." This was followed up by a letter, which triggered off the disciplinary proceedings by the Singapore Society of Accountants against the applicant, for contravening the Singapore Society of Accountants (Practice & Etiquette of Accountants) By-Laws 1966. At the disciplinary hearing, Counsel for the applicant raised objections that the case was outside the jurisdiction of the Disciplinary Committee of the Society. As the Committee ruled that they did have jurisdiction, the applicant appealed to the High Court to determine, whether the case was or was not within the jurisdiction of the Committee.

The case for the applicant was that the alleged professional offence of misconduct was committed in Hong Kong by an accountant living and working there and as the applicant was a representative of a Hong Kong firm, it should be the Hong Knog body which could discipline him and not the Singapore Society. However the Society contended that the applicant was at all material times and still a member of the Singapore Society and that at the relevant time he was carrying on an accountants practice in partnership in Singapore. Further the professional offence hatched in Singapore and that the offence to be committed in Singapore.

Held:

[1] The Society has control over the professional conduct of all its members be they be practising in Singapore or elsewhere.

[2] The Society had not only statutory but also territorial jurisdiction over the applicant.

[3] The Disciplinary Committee was right in ruling that it had jurisdiction to go into the charges against the applicant.

[Application dismissed.]

Cases referred to:

Treacy v. Director of Public Prosecutions [1971] AC 537
Cordova Land Co. Ltd. v. Victor Brothers Inc. [1966] 1 WLR 793
George Monro, Ltd. v. American Cyanamid and Chemical Corporation [1944] KB 432

Legislation referred to:
Accountants Act (Cap 212) [Sing], ss. 29, 31, 34(1)(b)

Other sources referred to:
Dicey on Conflict of Laws, (10th Edn.), Vol. 1 pp. 213, 214

For the applicant - H. Elias (Teddy Lim with him)
For the respondents - Lee Han Yang (Lee Han Tiong with him)

JUDGMENT

AP Rajah J:

The applicant, Ng Kong Yau, in this originating motion is a practising public accountant and as such is subject to the provisions, including those of discipline, of the Accountants Act (Cap. 212) (the Act) and of the ByLaws of the Singapore Society of Accountants (the Society) made under s. 31 of the Act and known as the Singapore Society of Accountants (Practice and Etiquette of Accountants) By-Laws, 1966. He commenced practice in Singapore as a public accountant in 1965 under the name or style of Ng Kong Yau & Co. (the Firm). In 1977 the applicant concurrently commenced practice in the Colony of Hong Kong as a certified public accountant under the name or style of Lawrence Wong & Co. In 1979 he admitted into the Firm two other Singapore public accountants namely David Chan Kong Yuen (David Chan) and Roland Ma Koh Eng (Roland Ma).

Sometime prior to 21 November 1979 the applicant came to Singapore from Hong Kong and discussed with his partners, David Chan and Roland Ma, certain matters "in connection with the establishment of mutual co-operation between our two Firms". He then left for Hong Kong and from there on 21 November 1979 wrote a letter (the Letter) on his Hong Kong firm letter head to his Singapore partners and the Firm wherein he set out "in order to have a clear understanding for your comments and approval" the matters, which had been discussed with them while he was in Singapore. The Letter is hereunder set out verbatim as this was what triggered of the disciplinary proceedings by the Society against the applicant:

> Dear David and Roland,
>
> Mutual Co-operation
>
> As discussed when I was in Singapore in connection with the establishment of mutual co-operation between our two Firms, I set out below the points in order to have a clearer understanding for your comments and approval:
>
> 1. We shall render services, normally rendered by Certified public accountants in Hong Kong, to your clients who wish to establish or who have already established a place of business in Hong Kong and you will render services, normally rendered by public accountants in Singapore, to our clients who wish to establish or who have already established a place of business in Singapore.
> 2. Wherever possible we shall indicate to you and you will indicate to us the fee you or we should charge for the services to be rendered. The party who actually renders the services to the clients will determine the fee and will bill the clients direct but his fee should not be less than the amount indicated by the other party, except those cases where the fee and the terms have been mutually agreed to by both the parties.
> 3. We shall both assist each other, as far as possible, in order that satisfactory services can be rendered to the clients.
> 4. A service fee at 20% of the fee collected from the clients will be payable by the party collecting the fee from the clients to the other.

5. The service fee is to be set off against the amount due to each other and the balance then due is to be paid every six months in July and January each year for the fee due and payable up to 30 June and 31 December each year.

I shall appreciate if you will kindly let me have your comments and approval as I like to see that the proposed arrangement will be of benefit to all of us.

At the hearing of the Disciplinary Committee held on 15 February 1982 the applicant faced charges as follows:

You, Ng Kong Yau, PAS, are charged that you did on or about 21 November 1979 send or cause to be sent to Messrs David Chan and Roland Ma of Ng Kong Yau & Co., Bank of East Asia Building, 5th Floor, 137-E, 1 Market Street, Singapore 0104 a letter on the subject of 'Mutual Co-operation' in contravention of the Singapore Society of Accountants (Practice & Etiquette of Accountants By-laws) 1966 and you have thereby committed an act discreditable to an accountant within the meaning of s. 34(1)(b) of the Accountants Act (Cap. 212)

Alternatively,

You, Ng Kong Yau, PAS are charged that you did on or about 21 November 1979 send or cause to be sent to Messrs David Chan and Roland Ma of Ng Kong Yau & Co., Bank of East Asia Building, 5th Floor, 137-E, 1 Market Street, Singapore 0104, a letter on the subject of 'Mutual Co-operation' in contravention of By-law 6(1) of the Singapore Society of Accountants (Practice & Etiquette of Accountants) By-laws 1966 and you have thereby committed an act discreditable to an accountant within the meaning of s. 34(1)(b) of the Accountants Act (Cap. 212).

At the disciplinary hearing Counsel for the applicant raised 3 preliminary objections to the charges. Only the first of these 3 objections concerns us in these proceedings. Counsel took the point that as the alleged offences were contained in the Letter which was written in Hong Kong by the applicant, in his capacity as a Hong Kong certified public accountant, the case was outside the jurisdiction of the Disciplinary Committee of the Society and asked for a ruling thereon. The Disciplinary Committee responded by ruling that they did have the jurisdiction, whereupon Counsel applied for a stay of proceedings to enable the applicant to appeal to the High Court to determine the question whether the case was or was not within the jurisdiction of the Disciplinary Committee. The application was acceded to by the Disciplinary Committee and the hearing of the charges as framed was adjourned pending proceedings before the High Court on this single point.

The applicant then by his Counsel took out this originating motion and the matter came before me for determination on this single issue.

Counsel put the case for the applicant as follows:

(1) That the alleged professional offence of misconduct was committed in Hong Kong.

(2) That the alleged professional offence was committed by an accountant living and working in Hong Kong.

(3) That as the applicant was a representative of a Hong Kong firm of certified public accountants and as the offence was committed in Hong Kong it should be his fellow professionals in Hong Kong who could discipline him and not the Society in Singapore.

Counsel for the applicant, to sustain his case, called to his aid the principles governing jurisdiction of our Courts in relation to criminal and tortious acts and breaches of contract and cited the cases of *Treacy v. Director of Public Prosecutions* [1971] AC 537 on criminal acts, *Cordova Land Co. Ltd. v. Victor Brothers Inc.* [1966] 1 WLR 793 and *George Monro,*

Ltd. v. American Cyanamid and Chemical Corporation [1944] KB 432 on breaches of contract and referred to *Dicey on Conflict of Laws* (10th Edn.,) Vol., 1 at pp. 213 & 214 on tortious acts and contended that the forum for discipline in the instant case was Hong Kong and not Singapore.

As against this Counsel for the Society urged upon me the view that the applicant on the facts of this case was clearly within the control of the Society by virtue of the Act, the preamble to which reads, "an Act to constitute the Singapore Society of Accountants and to provide for the registration and control of Accountants". He submitted:

(1) That the applicant was at all material times and still is a member of the Society under the provisions of the Act.

(2) That at the relevant time he was carrying on an accountants practice in partnership in Singapore under the style of Ng Kong Yau & Co.

(3) That the professional offence was hatched in Singapore when the applicant was in Singapore some time prior to his writing the Letter.

(4) That the Letter evidenced a professional offence to be committed in Singapore.

(5) That although the Letter physically originated in Hong Kong it was sent to Singapore by the applicant and received by his partners in Singapore where the professional offence was to be committed.

Of the two positions taken by the applicant and the Society I find that of the Society more acceptable in terms of the applicant's obligations, duties and conduct under the Act.

It seems to me that the applicant came to Singapore to persuade his partners into doing something which the Letter sets out and this while he was a registered public accountant in Singapore and carrying on an active accounting practice in Singapore. Briefly, the case for the applicant is put on the basis that, as he lives and works in Hong Kong, he is not professionally accountable to the Society. He may well have his residence in Hong Kong but does he work exclusively in Hong Kong? Not on the facts of this case. The fact that he is a partner, more so as he is the founder partner of a Singapore accountancy firm, enables him, no doubt, to come in and go out of Singapore as and when he wishes. In these circumstances does he not have a business and work in Singapore? If I accede to the persuasions of Counsel for the applicant could it not be that it could result in two sets of professional standards - one for a Singapore accountant residing and working in Singapore and another for a Singapore accountant who is a partner in a Singapore firm but residing in Hong Kong and where he carries on practice either on his own or in partnership? The arguments advanced on behalf of the applicant could have been plausible had he ceased to be a member of the Society by virtue of s. 29 of the Act. But as it is in this case the applicant is both a member of the Society as well as a certified public accountant in Hong Kong.

I do not think that the cases cited for the applicant assist him. In the instant case although the applicant wrote the Letter in Hong Kong he was at the moment of writing and still is a member of the Society. In my view under s. 31 of the Act the Council of the Society has control over the professional conduct of all its members be they practising in Singapore or elsewhere. In any event the Letter, even though written and posted in Hong Kong by the applicant, reached his partners in Singapore and was to be acted upon in Singapore. Clearly, on the facts of the instant case, the Society has not only statutory but territorial jurisdiction

over the applicant. The short answer to the applicant is that under the Act the Society has control over the professional conduct of all its members, whether such conduct be within or outside Singapore. It is a purely domestic matter of the Society deciding who are fit to continue to be members of it and not a complex question of conflict of laws.

It follows, therefore, that, in my view, the Disciplinary Committee was right in ruling that it had jurisdiction to go into the charges against the applicant.

Also found at [1983] 1 CLJ 267